IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2018

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.724 of 2017
and C.M.P.No.18310 of 2017

Arulmigu Chinnamuthu Mariamman Temple
GST Road and Chinna Melameiyur Village
Mudaliyar Community represented by its

1. C.V.N.Kumarasami
Administrative President

2. B.Sampath
Executive Trustee of the Chinnamuthu
Mariamman Temple

3. M.Thulasi
Perudhanakkarar of the Chinna
Melameiyur village .. Appellants/Appellants/
Plaintiffs

Vs.

1. S.Panneerselvam
2. R.Sathiyamurthy
3. A.G.Ravi

4. The Manager, Indian Bank,
Melameiyur Branch
rep. By its Branch Manager,
GST Road,
Chengalpattu Town and Taluk,
Kancheepuram District. .. Respondents/Respondents /
Defendants

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgement and decree dated 10.02.2017 passed in A.S.No.4 of 2012 on the file of the Additional Subordinate Judge, Chengalpattu, confirming the judgement and decree dated 29.10.2010, in O.S.No.1 of 2004 on the file of the District Munsif, Chengalpattu.

For Appellants : Mr.D.Saikumaran

J U D G E M E N T

Aggrieved by the concurrent decisions of the Courts below, the plaintiff Temple has filed the above Second Appeal.

2. The plaintiff is Arulmighu Chinnamuthu Mariamman Temple, Chinna Melamaiyur Village Mudaliar Community represented by plaintiffs 1 to 3. The first plaintiff claims to be the Administrative President of the temple. The second plaintiff is the Executive Trustee of the temple and the third plaintiff is the Perudhanakkarar of the village. The first defendant is the son of late Shanmugha Sundara Mudaliar, who is the Ex-President of the Chinnamuthu Melamaiyur Mudaliar community and Administrator of the Chinnamuthu Mariamman Temple. He died in the year 2002.

3. It is stated by the plaintiffs that certain amount, namely, Rs.1,75,469.00 was handed over to the late Shanmugha Sundara Mudaliar, as a custodian of the same. According to them, the said amount was contributed for the festival by the community, which has to be spent for the temple. Since the said Shanmugha Sundara Mudaliar died, the first defendant, who is his son, without the knowledge and consent of the village people said to have handed over the money to the second and third defendants, who had, in turn, deposited the same with the fourth defendant. It is the allegation of the plaintiffs that certain sums were also withdrawn by the second and third defendants out of the funds so deposited. Hence, the suit in O.S.No.1 of 2004 is filed in the District Munsif Court, Chengalpattu, for a declaration that the second defendant is not entitled to receive the temple amount from the first defendant and for permanent injunction restraining the fourth defendant from in anyway disbursing the amount to the second and third defendants or any other persons and for a mandatory injunction directing the second and third defendants to reinvest the sum withdrawn by them.

4. The first defendant resisted the suit contending that the Temple is under the control of the Hindu Religious and Charitable Endowment (HR & CE) managed by its Trustees and Executive Officer and the suit is not maintainable without impleading the HR & CE Department. It is stated by him that his father, who was the President of the Temple, had surplus funds after meeting the festival expenses. The said surplus amount of Rs.1,75,000/- was resolved to be received from the first defendant and spend for renovation of Karpaga Vinayagar Temple in Melamaiyur Village. The villagers also authorised the second and third defendants to receive the said amount and deposit the same into the fourth defendant's Bank.

5. The second and third defendants had also filed written statements contending that the temple is being controlled by the HR & CE, and that the plaintiffs have got no power to claim either title or recovery of money from the defendants. It was further contended that the said defendants have every right to withdraw the amount lying in the name of the Temple for the purpose of renovation of the Temple and it is not for the plaintiffs to challenge the same.

6. The fourth defendant, which is the Bank, had stated that the amount in dispute is lying in S.B. Account No.5482, which was opened on 07.11.2003 by the second and third defendants, with a copy of the resolution of the Temple Committee dated 10.08.2003 and the money has not been permitted to be withdrawn by anybody.

7. Before the Trial Court, on side of the plaintiffs, third and second plaintiffs have been examined as P.Ws.1 and 2 and Exs.A.1 to A.7 have been marked. On the side of the defendants, apart from examining the first and third defendants as D.Ws.1 and 2, one Sundaramurthy has been examined as D.W.3 and Exs.B.1 to B.3 have been marked.

8. Upon considering the oral and documentary evidence, the Courts below had concurrently held that the plaintiffs have got no right to seek a declaration as prayed for and the injunction restraining defendants 2 and 3 from withdrawing the amount. Hence, the Second Appeal is filed by the plaintiffs.

9. Heard the learned counsel for the appellants/plaintiffs.

10. The plaintiffs are not the trustees of the Temple. It is only the villagers themselves, who had collected funds from the public and celebrated the Kumbabhishekam of the Sundaramurthy Vinayagar Temple, which is a private temple maintained by Chinna Melameiyur Mudaliyar community. However, it is admitted by both the parties that the Temple is a public temple and is controlled by the HR & CE Department, and hence, the Ex-Trustees and the Peruthanakkarar of the village have no power to utilize the amount collected from the public. The fourth defendant had also stated that the money is lying only with the Bank and nobody was allowed to withdraw the same.

11. Admittedly, when the Temple is under the management and control of HR & CE Department and the claim of the plaintiffs is that the money belongs to the Temple, it is for the HR & CE Department to take over and utilize the same for the purpose of the Temple. But the HR & CE has not been made a party to the suit. In the absence of HR & CE, any transaction from the Bank without their knowledge cannot be permitted. The case of the

plaintiffs is that out of the said amount, the second and third defendants had withdrawn Rs.20,000/- and Rs.15,000/- on two occasions without any reason. Hence, they prayed for mandatory injunction to redeposit the amount. The plaintiffs have not established the said fact by producing any piece of evidence to show that the monies were withdrawn or even it was spent for the purpose other than the Temple. The amount, which belongs to the Temple has been kept safely in the deposit of the fourth defendant Bank. The plaintiffs also agreed that the Temple is being administrated only by HR & CE. While so, even if the second and third defendants are at fault, it is open to the plaintiffs to complain the same to the Executive Officer of the Temple and not to move this Court. As stated by the Bank, the amount is intact only in view of the injunction order operating against them. In such circumstances, it is open to the parties, either the plaintiffs or the defendants, to approach the Executive Officer, HR & CE Department, in the event of any grievance. The Executive Officer of the Temple is directed to take care of the money, that is kept in deposit in the name of the Temple and utilize the same appropriately for the Temple and maintain proper accounts.

12. With the above directions, the appeal is dismissed as devoid of any merits, and the the judgement and order of the Courts below are confirmed. No costs. Consequently, pending application is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gg
To
1. The Additional Subordinate Judge, Chengalpattu.

2. The District Munsif, Chengalpattu.

3.The Section Officer, VR Sectin,
High Court, Madras(2 copies)

4.The Executive Offier, HR & CE Dept.
Arulmigu Chinnamuthu Mariamman Temple,
GST Road & Chinna Melameiyur Village

+1cc to M/s.D.Saikumaran, Advocate SR.No.18036

RSK(CO)
sm:3.4.2018

Judgement in
S.A.No.724 of 2017